

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM)	NOTICE OF AMENDMENT,
17.56.101, 17.56.102, 17.56.104,)	ADOPTION, AND REPEAL
17.56.105, 17.56.201 through 17.56.203,))	
17.56.301 through 17.56.304, 17.56.308)	(UNDERGROUND STORAGE
through 17.56.310, 17.56.403,)	TANKS)
17.56.407, 17.56.408, 17.56.701 through))	
17.56.705, 17.56.801 through 17.56.803,))	
17.56.805 through 17.56.811, 17.56.816,))	
17.56.817, 17.56.820 through 17.56.825,))	
17.56.827, 17.56.828, 17.56.901,)	
17.56.1002, 17.56.1003 through)	
17.56.1005, and 17.56.1422; the)	
adoption of new rule I; and the repeal of)	
ARM 17.56.120 and 17.56.121)	
pertaining to the management of)	
underground storage tanks,)	
incorporation by reference, and)	
assessment of administrative penalties)	
)	
)	

TO: All Concerned Persons

1. On July 5, 2007, the Department of Environmental Quality published MAR Notice No. 17-260 regarding a notice of public hearing on the proposed amendment, adoption, and repeal of the above-stated rules at page 915, 2007 Montana Administrative Register, issue number 13.

2. The department has amended ARM 17.56.101, 17.56.102, 17.56.104, 17.56.105, 17.56.201 through 17.56.203, 17.56.301 through 17.56.304, 17.56.308 through 17.56.310, 17.56.403, 17.56.407, 17.56.408, 17.56.701 through 17.56.705, 17.56.801 through 17.56.803, 17.56.805 through 17.56.811, 17.56.816, 17.56.817, 17.56.820 through 17.56.825, 17.56.827, 17.56.828, 17.56.901, 17.56.1002, 17.56.1003 through 17.56.1005, and 17.56.1422, and repealed ARM 17.56.120 and 17.56.121 exactly as proposed. The department has adopted New Rule I (17.56.204) as proposed, but with the following changes, new matter underlined, stricken matter interlined:

NEW RULE I (17.56.204) SECONDARY CONTAINMENT, UNDER-
DISPENSER CONTAINMENT, AND INTERSTITIAL MONITORING (1) through
(1)(c) remain as proposed.

(2) Any pressurized product piping regulated under this chapter that is
installed or replaced must:

(a) remains as proposed.

- (b) terminate in a liquid tight sump at each end. The sumps must:
 - (i) and (ii) remain as proposed.
 - (iii) allow for visual inspection and access to the components in the containment system and/or otherwise allow the system to be monitored; and
 - (c) employ approved continuous interstitial monitoring, as described in ARM 17.56.407(1)(g) and (2), as a monthly leak detection method; and
 - ~~(d) employ an automatic line leak detector.~~
 - (3) through (5)(d) remain as proposed.

3. The following comments were received and appear with the board's responses:

COMMENT NO. 1: A tank manufacturer commented that manufacturers should be allowed to repair tanks without obtaining an installation license. The commentor noted that the rules recognize the expertise of manufacturers in repair situations. For example, the rules require that tank repair be performed under the on-site supervision of a manufacturer's authorized representative or that the tank owner obtain the manufacturer's certification that the repaired tank meet the manufacturer's design standards. ARM 17.56.304(3)(b). Because the rules include tank repair in the definition of "installation," a person must have an installer license to perform the repairs. To obtain a license, a person must have experience in underground storage tank system installation and closure. The manufacturer cannot meet this requirement because it is not an installer or closer of tanks or tank systems. The commentor recommended that the definition of "installation" in ARM 17.56.101(32) be amended to exclude repairs and modifications performed by the manufacturer. This will allow the manufacturer to honor its product warranty in the event tank repairs are needed.

RESPONSE: The definition of "installation" provided in 75-11-203(6), MCA, includes the repair of an underground storage tank. Also, the definition of "installation" provided in ARM 17.56.101(32) includes the repair of an underground storage tank. The term "repair" means to restore a damaged or leaking tank or underground storage tank system component to the manufacturer's original design standards. Therefore, the requirement in ARM 17.56.1303(1), that a person shall obtain a permit to close or install an underground storage tank, is appropriately applied to a person who repairs underground storage tanks.

Because repairs are included in the statutory definition of "installation" or "to install," an exemption for repairs must first be codified in statute before it can be adopted in the administrative rules. The department is not considering such a revision to the statute at this time.

If the manufacturer's personnel cannot meet the requirements for obtaining an installation permit, the manufacturer could contract with independent tank installers that have installation permits to honor its product warranty in the event tank repairs are needed.

COMMENT NO. 2: A commentor stated that an automatic line leak detector would not work properly with product piping that is pressurized by gravity or on lines between a master dispenser and its satellite dispenser.

RESPONSE: The department agrees with the comment. The department has removed the requirement for automatic line leak detectors for pressurized product piping with continuous interstitial monitoring. The department will study the use and effectiveness of automatic line leak detectors with continuous interstitial monitoring methods on pressurized product piping. In a future rulemaking, the department will reconsider the requirements for the use of automatic line leak detectors with continuous interstitial monitoring methods on pressurized product piping.

Reviewed by:

DEPARTMENT OF ENVIRONMENTAL
QUALITY

/s/ James M. Madden
JAMES M. MADDEN
Rule Reviewer

By: /s/ Richard H. Oppen
RICHARD H. OPPER, DIRECTOR

Certified to the Secretary of State, August 13, 2007.